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<b>PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNAVOIDABLY UNDER 37 CFR 1.137(a)</b>		Docket Number (Optional) 07620004AA
First Named Inventor: Darren ROGERS	Art Unit: 1714	
Application Number: 09/733,602	Examiner: M. MEDLEY	
Filed: December 8, 2000		
Title: DESIGNED CELLULAR COAL		
 Attention: Office of Petitions <b>Mail Stop Petition</b> Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450		
<p>NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (703)305-9382.</p> <p>The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the Office notice or action plus any extensions of time actually obtained.</p> <p style="text-align: center;"><b>APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION</b></p> <p>NOTE: A grantable petition requires the following items:</p> <ul style="list-style-type: none"><li>(1) Petition fee.</li><li>(2) Reply and/or issue fee.</li><li>(3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications filed before June 8, 1995, and for all design applications; and</li><li>(4) Adequate showing of the cause of unavoidable delay.</li></ul> <p>1. Petition fee</p> <p><input checked="" type="checkbox"/> Small entity - fee \$ <u>250.00</u> (37 CFR 1.17(l)) Applicant claims small entity status.. See 37 CFR 1.27.</p> <p><input type="checkbox"/> Other than small entity - fee \$ _____ (37 CFR 1.17(l)).</p> <p>2. Reply and/or fee</p> <p>A. The reply and/or fee to the above-noted Office action in the form of</p> <p style="text-align: center;"><u>Reply to Notice of Informal Application</u> (identify the type of reply):</p> <p><input type="checkbox"/> has been filed previously on _____</p> <p><input checked="" type="checkbox"/> is enclosed herewith.      12/28/2004 AWONDAF1 00000025 09733602</p> <p>B. The issue fee of \$ <u>955.00</u>      01 FC:2452      250.00 OP</p> <p><input checked="" type="checkbox"/> has been paid previously on <u>March 15, 2004</u></p> <p><input type="checkbox"/> is enclosed herewith.</p>		

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This collection of information is required by 37 CFR 1.137(a). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 8 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED  
UNAVOIDABLY UNDER 37 CFR 1.137(a)**

Docket Number (Optional)

07620004AA

## 3. Terminal disclaimer with disclaimer fee

☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ \_\_\_\_\_ for a small entity or  
\$ \_\_\_\_\_ ther than a small entity) disclaiming the required period of time enclosed herewith  
(see PTO/SB/63).4. An adequate showing of the cause of the delay, and that the entire delay in filing the required reply from the  
due date for the reply until the filing of a grantable petition under 37 CFR 1.137(a) was unavoidable, is  
enclosed.**WARNING: Information on this form may become public. Credit card information should not  
be included on this form. Provide credit card information and authorize on PTO-2038.**December 24, 2004

Date



Signature

703-201-6543

Telephone Number

Philip D. Lane

Typed or printed name

41,140

Registration Number, if applicable

P.O. Box 651295

Address

Potomac Falls, Virginia 20165-1295

Address

Enclosures: ☒ Fee Payment☒ Reply☐ Terminal Disclaimer Form☒ Additional sheets containing statements establishing unavoidable delay☒ Declarations by Auzville Jackson, Jr and Philip D. Lane with Exhibits**CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]**

I hereby certify that this correspondence is being:

☒ deposited with the United States Postal Service on the date shown below with sufficient postage as first  
class mail in an envelope addressed to: **Mail Stop Petition**, Commissioner for Patents, P.O. Box  
1450, Alexandria, VA 22313-1450.☐ transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at  
(703) 872-9306.December 24, 2004

Date



Signature

Philip D. Lane

Typed or printed name of person signing certificate

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED  
UNAVOIDABLY UNDER 37 CFR 1.137(a)**

NOTE: The following showing of the cause of unavoidable delay must be signed by all applicants or by any other party who is presenting statements concerning the cause of delay.

December 24, 2004

Date



Signature

41,140

Registration Number, if applicable

Philip D. Lane

Typed or printed name

(In the space provided below, please explain in detail the reasons for the delay in filing a proper reply)

Please see the following documents accompanying this petition:

1. Showing of Unavoidable Abandonment Under 37 C.F.R. 1.137(a);
2. Declaration of Auzville Jackson Jr. (with exhibits A and B); and
3. Declaration of Philip D. Lane (with exhibits A, B, C, and D).

*(Please attach additional sheets if additional space is needed.)*



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

*In re* Patent Application of:

Darren ROGERS

Serial No.: 09/733,602

Confirmation No.: 2099

Filed: December 8, 2000

Docket No.: 07620004AA

Group Art Unit: 1714

Examiner: Margaret B. MEDLEY

For: DESIGNED CELLULAR COAL

Attention: Office of Petitions  
Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**SHOWING OF UNAVOIDABLE ABANDONMENT UNDER 37 C.F.R. § 1.137(a)**

Sir:

In response to the Notice of Abandonment dated November 10, 2004, Applicant provides the following remarks and evidence that the abandonment was unavoidable. A declaration from Auzville Jackson, Jr. and Philip Lane are attached herewith. Applicant respectfully requests favorable consideration of this petition and that the above reference application be revived as soon as possible.

**An Office Letter Dated May 16, 2001 Requiring a Response Was Never Received**

The Notice of Abandonment indicates that that application has gone abandoned for failure to respond to an Office letter dated May 16, 2001 and that the oath identifying the application number is required. There is no evidence in our files of ever having received an Office letter dated May 16, 2001 which required a response to a defective declaration. The

attorney of record during this time was Auzville Jackson, Jr. In his declaration, Mr. Jackson states that he did not receive such an Office letter. The undersigned has been the attorney of record from September 25, 2002 to present, and the Office letter dated May 16, 2001 requiring a response to a defective oath was not received. Further, during the prosecution of the application from September 25, 2002 to the payment of the issue fee on March 15, 2004, no indication that the USPTO believed there were any deficiencies with the declaration for this application was received. Upon inspection of the file history on the USPTO public PAIR website, there is a Notice of Informal Application dated May 16, 2001. This Notice of Informal Application indicates that the oath or declaration does not identify the residence of each inventor. Neither Mr. Jackson nor I ever received the Notice of Informal Application dated May 16, 2001. See Mr. Jackson's declaration and my declaration enclosed herewith.

The Executed Declaration Was Received by the USPTO on December 8, 2000

Accompanying the filing of the above application on December 8, 2000 was an executed declaration that provided the city and state of residence for each inventor as well as an executed assignment. However, the signature page of the declaration and the signature page of the assignment document are switched in the USPTO records. The declaration on file with USPTO contains the correct page 1 but the second page of this document is the signature page for the assignment. See Lane Declaration, Exhibit C. Similarly, the assignment, which was recorded as of December 8, 2000, has a correct page 1, but the second page of this document is the signature page for the declaration. See Lane Declaration, Exhibit D. How the pages of these documents were switched is not known. However, these documents show the USPTO was in possession of

the all the appropriate documents, including the executed declaration indicating the city and state of residence for each inventor, at the time this application was filed.

Prosecution Continued Through Payment of the Issue Fee

The undersigned actively prosecuted this application from September 25, 2002 and paid the issue fee on March 15, 2004. During this time, there was never any indication that the USPTO believed there were any deficiencies with the declaration that needed addressing. The only indication of such a deficiency that was received by the attorney was the Notice of Abandonment received on November 10, 2004 based on what is believed to be an improper Notice of Informal Application. This Notice of Informal Application which was dated three and half years earlier and was never received by the attorneys of record.

In view of the above remarks, submitted evidence, Mr. Jackson's declaration, and Mr. Lane's declaration, Applicant respectfully requests favorable consideration of this petition and that the present application be revived based on unavoidable abandonment.

Applicant believes that no extensions of time are required at this time. If extensions of time are necessary, then such extensions of time are hereby petitioned for under 37 C.F.R. § 1.136(a). Any fees required for further extensions of time and any fees for the net addition of claims are hereby authorized to be charged to my Deposit Account No. 503310.

If there are any question or other outstanding issues, please feel free to contact the undersigned attorney at 703-201-6543.

Respectfully submitted,



Philip D. Lane  
Reg. No. 41,140

Date: December 24, 2004

Philip D. Lane  
P.O. Box 651295  
Potomac Falls, VA 20165-1295  
Tel: 703-201-6543  
Fax: 703-723-7732